

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALAN T. SWEET and MICHELLE SWEET,

Plaintiffs,

v.

NORTHWEST TRUSTEE SERVICES, et al.

Defendants.

NO. C05-1463JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on Defendants' motion to strike Plaintiffs' amended complaint. (Dkt. # 12). Having reviewed the motion, the court DENIES Defendants' motion to strike. On its own motion, the court REMANDS this action to Skagit County Superior Court.

**II. BACKGROUND**

This action stems from a quiet title action. Plaintiffs filed their claim in Skagit County Superior Court on August 4, 2005 against Northwest Trustee Services ("Northwest Trustee"), Shannon Blood ("Blood"), EMC Mortgage Corporation ("EMC Mortgage"), First American Title Company ("First American"), and Washington Mutual Bank ("WAMU"). In their original complaint, Plaintiffs alleged claims arising under state law as well as under the

1 federal Truth in Lending Act, 15 U.S.C. § 1601 et seq. and Federal Reserve Board  
2 Regulations C, Z, and AA, 12 C.F.R. §§ 203, 266, and 227, respectively. (Dkt. # 1, Exh. A).  
3 On August 24, 2005, Northwest Trustee and Blood filed a notice of removal with this court,  
4 alleging that removal is proper based on federal question jurisdiction under 28 U.S.C. §§  
5 1331 and 1441. Shortly thereafter, Northwest Trustee and Blood filed a motion to dismiss  
6 under Fed. R. Civ. P. 12(b)(6). (Dkt. # 2). EMC Mortgage likewise filed a motion to  
7 dismiss. (Dkt. # 9).

8 Plaintiffs sought an order remanding the case to Skagit County Superior Court. (Dkt. #  
9 6). Plaintiffs argued that this court lacked removal jurisdiction based on a federal question.  
10 In doing so, Plaintiffs cited their intention to amend their complaint and voluntarily dismiss  
11 all federal claims. This court denied Plaintiffs' motion without prejudice and instructed  
12 Plaintiffs to file an amended complaint with this court. (Dkt. # 8). Plaintiffs complied and  
13 filed an amended complaint that drops the federal claims. (Dkt. # 11). Defendants Northwest  
14 Trustee, Blood, and WAMU now move to strike this amended complaint for failure to comply  
15 with Fed. R. Civ. P. 15(a) ("Rule 15(a)").

### 16 III. ANALYSIS

#### 17 A. Plaintiffs' Amended Complaint

18 Under Rule 15(a), each party has a right to amend its pleadings once as a matter of  
19 course, so long as it occurs prior to any responsive pleading. If a responsive pleading has  
20 been filed, parties must obtain leave of court or consent of the adverse party. Motions to  
21 dismiss under Fed. R. Civ. P. 12(b)(6) are *not* "responsive pleadings" for the purposes of Rule  
22 15(a); therefore, a defendant's filing of a 12(b)(6) motion does not bar a plaintiff from  
23 thereafter amending the complaint as a matter of right. Crum v. Circus Circus Enterprises,  
24 231 F.3d 1129, 1130 fn. 3 (9th Cir. 2000).

1 Here, Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) does not constitute  
2 a responsive pleading such that Plaintiffs would be barred from filing an amended complaint.  
3 Moreover, this court specially directed Plaintiffs to file an amended complaint. (Dkt. # 8)  
4 ("[T]he court . . . directs Plaintiffs to properly submit its amended complaint to this court  
5 within ten days . . ."). Thus, even if Defendants had filed a responsive pleading (which they  
6 have not), the court's directive to Plaintiff surely amounts to "leave of [the] court" under Rule  
7 15(a). Plaintiffs' filing of an amended complaint is proper and Defendants' motion to strike  
8 is denied.

9 **B. Jurisdiction Over Plaintiffs' State-Law Claims**

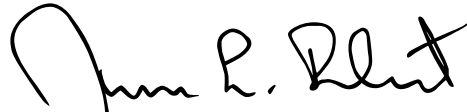
10 Even if subject matter jurisdiction exists at the time of removal, it may be an abuse of  
11 discretion for a district court to continue exercising jurisdiction over pendant state-law claims  
12 where all federal claims have dropped out of the lawsuit in its early stages. Carnegie-Mellon  
13 Univ. v. Cohill, 484 U.S. 343, 349 (1988). A federal court, then, has discretion to remand  
14 remaining state-law claims to state court in order to best accommodate values of economy,  
15 convenience, fairness, and comity. Id. at 351-2; see also Harrell v. 20th Century Ins. Co., 934  
16 F.2d 203, 205 (9th Cir. 1991) (discussing district court's discretion to remand state-law  
17 claims).

18 In this action, the interests of judicial economy, convenience, fairness, and comity  
19 weigh heavily in favor of remanding the case to state court. Plaintiffs have filed an amended  
20 complaint in which they allege causes of action arising solely under state law. This court has  
21 yet to consider or adjudicate any of Plaintiffs' claims on the merits. Accordingly, the court  
22 remands the case in its entirety to Skagit County Superior Court, where the action originated.

**IV. CONCLUSION**

For the foregoing reasons, the court DENIES Defendants' Motion to Strike (Dkt. # 12) and REMANDS the case to Skagit County Superior Court.

Dated this 27th day of September, 2005.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART  
United States District Judge